



5th July, 2017

via On-Line DoE portal submission

U.S. Environmental Protection Agency
Attention: FOIA Officer

On behalf of the Sierra Club, I write to request that the United States Environmental Protection Agency (“EPA”) provide copies of the records described below pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), and the regulations of the Department of Energy set forth at 10 C.F.R. § 1004.

Sierra Club is the nation’s oldest grassroots organization and has over 600,000 members nationwide. Sierra Club is dedicated to the protection and preservation of the natural and human environment. Sierra Club’s purpose is to explore, enjoy and protect the wild places of the earth; to practice and promote the responsible use of the earth’s ecosystems and resources; and to educate and enlist humanity to protect and restore the quality of the natural and human environments.

One of Sierra Club’s priority national conservation campaigns involves promoting smart energy solutions. Sierra Club is particularly interested in ensuring that coal mines, plants, and ports comply fully with all applicable statutes and regulations. This campaign organizes individuals regionally and nationwide to work on coal-related issues and educates the public on these issues, including the impacts of coal on air and water quality.

Records Requested

Sierra Club hereby requests copies of the following documents pursuant to the FOIA:

With regard to the Clean Air Act’s Regional Haze requirements for Arkansas, any documents that reflect communications, including emails, or meetings with EPA Administrator Pruitt or any official in EPA's Washington, DC office and officials, personnel, or agents of the Arkansas Department of Environmental Quality, the Arkansas Attorney General’s office, Entergy Arkansas, Inc., SWEPCO, or the Arkansas Electric Cooperative Corporation.

The date range for this request is January 1, 2017 through the date of your response.

Exempt Records

If you regard any of the requested records to be exempt from required disclosure under FOIA, I request that you disclose them nevertheless; as such disclosure would serve the public interest of educating citizens. *See* 10 C.F.R. § 1004.1 (authorizing disclosure of documents exempt from FOIA disclosure where such disclosure is in the public interest).

Should you decide to invoke a FOIA exemption, please include in your full or partial denial letter sufficient information for the Club to appeal the denial. To comport with legal requirements this information must include:

1. Basic factual material about each withheld item, including the originator, date, length, general subject matter, and location of each item; and
2. Explanations and justifications for denial, including the identification of the category within the governing statutory provision under which the document (or portion thereof) was withheld and a full explanation of how each exemption fits the withheld material.

If you determine that portions of the records requested are exempt from disclosure, please segregate the exempt portions and mail the remaining records within the statutory time limits after the exempted material has been redacted from the records the Club is seeking at the email address listed below. If it is your position that a document contains non-exempt segments but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt and how the material is dispersed throughout the document. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

Fee Waiver Request

I respectfully request that you waive all fees in connection with this request as provided by 5 U.S.C. § 552(a)(4)(A)(iii) and 10 C.F.R. § 1004.9(a)(8). The Sierra Club has spent years promoting the public interest through the development of policies that protect human health and the environment, and has routinely received fee waivers under FOIA.

The Sierra Club is a national, nonprofit, environmental organization with no commercial interest in obtaining the requested information. Instead, the Sierra Club intends to maintain public websites containing the requested information, so the public can access this important information regarding pollution in their communities.

As explained below, this FOIA request satisfies the factors listed in DOE's governing regulations for waiver or reduction of fees, as well as the requirements of fee waiver under the FOIA statute – that “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii), *see*

also 10 C.F.R. § 1004.9(a)(8).

1. The subject matter of the requested records concerns identifiable “operations and activities of the government.”

The activities denoted in this request are “identifiable operations or activities of the government.” The Department of Justice Freedom of Information Act Guide expressly concedes that “in most cases records possessed by a federal agency will meet this threshold” of identifiable operations or activities of the government. And, in any event, the requested documents relate to EPA enforcement of Clean Air Act requirements, which is an activity of the U.S. government.

2. The disclosure of the requested documents has an informative value and will be “likely to contribute to an understanding of Federal government operations or activities.”

The Freedom of Information Act Guide makes it clear that, in the Department of Justice’s view, the “likely to contribute” determination hinges in substantial part on whether the requested documents provide information that is not already in the public domain. The requested records are “likely to contribute” to an understanding of your agency’s operations or activities because they are not otherwise in the public domain and are not accessible other than through a FOIA request. This information will facilitate meaningful public understanding of EPA’s implementation of Clean Air Act requirements, therefore fulfilling the requirement that the documents requested be “meaningfully informative” and “likely to contribute” to an understanding of your agency’s enforcement of federal environmental statutes and regulations.

3. The disclosure contributes to the understanding of the public at large.

The Sierra Club and its members have a longstanding interest and expertise in the subject of Clean Air Regulations and coal-burning and natural gas power plants. More importantly, the Sierra Club unquestionably has the “specialized knowledge” and “ability and intention” to disseminate the information requested in a broad manner, and to do so in a manner that contributes to the understanding of the “public-at-large.” The Sierra Club intends to disseminate the information it receives through FOIA regarding these government operations and activities in a variety of ways, including but not limited to, analysis and distribution to the media, distribution through publication and mailing, posting on the Club’s website, emailing, and list-serve distribution to members. Such dissemination will inform the public regarding how EPA goes about implementing Clean Air Act requirements.

4. The disclosure contributes “significantly” to public understanding of government operations or activities.

The records requested will contribute “significantly” to the public understanding of the government’s investigatory and enforcement role, and its “operations and activities” associated with Clean Air Act requirements. Further, the disclosure of the requested records is essential to public understanding of the potential impacts of emissions from these Arkansas power

plants. After disclosure of these records, the public's understanding of the potential impacts of emissions from these facilities will be significantly enhanced.

5. Sierra Club has no commercial interest that would be furthered by the requested disclosure.

The Sierra Club has no commercial interest in the requested records. Nor does it have any intention to use these records in any manner that "furthers a commercial, trade, or profit interest" as those terms are commonly understood. The Sierra Club is a tax-exempt organization under sections 501(c)(3) and 501(c)(4) of the Internal Revenue Code, and as such has no commercial interest. The requested records will be used for the furtherance of the Sierra Club's mission to inform the public on matters of vital importance to the environment and public health.

Records Delivery

We request that the Department of Energy comply with all relevant deadlines and other obligations set forth in the FOIA and the agency's regulations. 5 U.S.C. § 552, (a)(6)(A)(i); 10 C.F.R. § 1004. Please produce the records above in a timely manner by sending them to me at the address listed below. Please produce them on a rolling basis; at no point should the search for-or the deliberation concerning-certain records delay the production of others that the agency has already retrieved and elected to produce.

Given the large volume of the requested data, it would be mutually beneficial to work with you to determine the best possible methods and mediums to transfer the requested data. We would be happy to provide external data drives to transfer the data if that method is workable. Please contact me regarding the method to transfer all requested records as soon as possible:

Akriti Bhargava
akriti.bhargava@sierraclub.org

- or -

Sierra Club Environmental Law Program
2101 Webster Street, Suite 1300
Oakland, CA 9461
415.977.5629

Thank you for your cooperation. If you find that this request is unclear in any way please do not hesitate to call me to see if I can clarify the request or otherwise expedite and simplify your efforts to comply. I can be reached at 415.977.5629 or by e-mail at akriti.bhargava@sierraclub.org.

Sincerely,

/s/ Akriti Bhargava

Akriti Bhargava
Litigation Assistant
Sierra Club, Environmental Law Program
2101 Webster St., Suite 1300
Oakland, CA – 94612-3011
Email: akriti.bhargava@sierraclub.org
Phone: (415) 977-5629